

REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the following remarks.

Claim Status

Claims 1 - 2 as presented in the originally filed application are still active in this case. Claims 1 - 2 were previously amended.

§103 Rejection

Claims 1-2 stand rejected as being obvious from U.S. Patent Publication No. 2003/0099370 to Moore (hereinafter, "Moore") in view of U.S. Patent No. 7,288,072 to Stott (hereinafter, "Stott").
Applicant respectfully traverses.

In response to the Applicant's Amendment filed May 2, 2008, the examiner argues that the dual monitors of the instant invention could be utilized by Moore to create a better display system. The Examiner has merely provided a conclusory statement based on improper hindsight reconstruction. Thus, the Examiner has not established an apparent reason for combining the teachings of Moore and Stott. As a result, the Examiner has not established a *prima facie* case of obviousness.

In a recent Supreme Court decision, *KSR v. Teleflex*, the Court held that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit [emphasis added]. See *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1732, 82 USPQ2d 1385, 1390 (2007); citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness [emphasis added] ").

Accordingly, in order for the Examiner to establish a *prima facie* case of obviousness in this case, the Examiner must establish an apparent reason to combine the elements from Moore and Stott. This apparent reason can not be a mere conclusory statement, but must be based on some rational underpinning.

The Court in *KSR* further stated that:

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post

reasoning [emphasis added]. See *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1732, 82 USPQ2d 1385, 1390 (2007); citing *Graham v. John Deere Co. of Kansas City*, 383 U.S., at 36, 86 S. Ct. 684, 15 L. Ed. 2d 545 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "guard against slipping into the use of hindsight [emphasis added]" (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.2d 406, 412 (CA6 1964))).

Thus, the Examiner must establish the rational underpinnings for establishing the apparent reason to combine the teachings of Moore and Stott, without the use of the teachings of the instant invention, or improper hindsight reasoning.

As defined in the amended claims, filed in response to the first Office Action, the instant invention according to claim 1 is a method for matching hearing aids to the individual requirements of a patient with impaired hearing.

Moore, on the other hand, does not disclose a method of matching a hearing aid at all. What Moore discloses is an improved hearing aid which additionally uses image sensing to enable the user to better differentiate between noise and speech. Moore does not disclose any possibility of suiting or fitting the relation between sound and image in his device to the needs of a user. The

only possibility the user has, is to switch off the device (paragraph 26).

Consequently, Moore does not disclose a method for matching a hearing aid to the individual requirements of a user. If the Examiner sees this property in the Abstract of Moore he clearly is applying improper hindsight reasoning.

Claim 1 of the present application further asks for passing a video sequence or scene related to a sound example visually to the patient.

As opposed to this, in Moore, a received image is processed to determine an existence of human-generated sound and controls the audio signal level accordingly. No image is presented to the user or Moore. In fact, the device according to Moore would most likely fail, if interference of the user would be allowed, because the device works with such relatively abstract methods, like phoneme detection, which is not intelligible by a normal user.

Again, if the Examiner interprets the Moore reference to disclose passing a scene to the patient, he clearly is applying improper hindsight reasoning.

Claim 1 of the present invention further asks for the assessment of the acoustic experience in relation to the visual scene by a specialist.

Moore does not disclose passing the same visual scene together with a related sound to a specialist for adapting the patient's hearing aid. Moore does not disclose the involvement of a specialist at all.

From the foregoing, it is evident that one skilled in the art would not consider the use of a monitor to display a scene related with an acoustic signal for improving the system of Moore. Accordingly, there is no apparent reason to combine the teaching of Stott with that of Moore.

Stott discloses a computer-aided hearing test and is not dealing with a hearing aid at all. Therefore, one skilled in the art coming from Stott would also not consider using the display for the very specific optical system of Moore. The two references have not the slightest aspect in common, so that the combination suggested by the Examiner is without any rational underpinnings.

Additionally, Stott discloses the use of only one display. Using a second display would not make sense because the system is intentionally set up for use by the test person alone. The use of two displays within a computer system may be well known. But this does not mean that one skilled in the art would use two monitors where they are not needed. There is even less of a reason to use two monitors, if no monitor is needed at all, as in the set-up of Moore. There is no hint towards using a monitor in the system of Moore, much more, using two monitors as in the instant invention.

In sum, there is clearly no apparent reason for making the Examiner's suggested combination of Moore and Stott to arrive at the instant invention as disclosed in claim 1. Thus, the Examiner has not established a *prima facie* case of obviousness with claim 1 and Claim 1 should be allowed.

Claim 2 of the present application further calls for a closed room with a space for the specialist with a monitor facing the specialist and a space for the user with a monitor facing the user. The Examiner has not established a *prima facie* case of obviousness with regard to this element.

In order to establish a *prima facie* case of obviousness, all words in a claim must be considered. See MPEP § 2143.03.

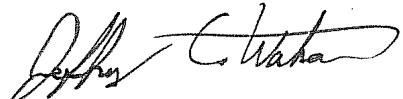
Neither Moore nor Stott disclose a closed room with a space for the specialist with a monitor facing the specialist and a space for the user with a monitor facing the user. The device disclosed in Moore is certainly not confined to a closed room because the noise problem is even more critical outside of closed rooms. In the system of Stott, which aims at the test to be administered by the patient himself, the optimum result is achieved when the operator or audiologist is not in the same room with the test person.

Accordingly, the combination of Moore and Stott does not teach or suggest all the features of claim 2. Thus, the Examiner has not established a *prima facie* case of obviousness over claim 2, and claim 2 should be allowed.

Conclusion

In view of the foregoing, Applicant respectfully requests an early Notice of Allowance in this application.

Respectfully submitted,



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